(2)

No. 86-1111

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

DERBY ASSOCIATES, A PARTNERSHIP OF THE STATE OF NEW JERSEY

Petitioner,

v.

SEASHORE CLUB CONDOMINIUM ASSOCIATION, INC., A CORPORATION OF THE STATE OF NEW JERSEY; THE BOARD OF TRUSTEES OF SEASHORE CONDOMINIUM ASSOCIATION, INC., AND GNOC CORP. t/a GOLDEN NUGGET, A CORPORATION OF THE STATE OF NEW JERSEY, GOLDEN NUGGET, INC., j/s/a

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT/APPELLATE DIVISION OF THE STATE OF NEW JERSEY

STEPHEN N. DRATCH*
MARTIN L. GREENBERG
GREENBERG, MARGOLIS, ZIEGLER, SCHWARTZ, DRATCH, FISHMAN, FRANZBLAU & FALKIN, P.A.
Attorneys for Respondents
Three ADP Boulevard
Roseland, New Jersey 07068
(201) 992-3700

Counsel of Record

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

50pp

QUESTION PRESENTED

Whether the Appellate Division of the Superior Court of the State of New Jersey in its one paragraph affirmance of the Trial Court's lengthy opinion correctly held that P.L. 1985, c. 3 (providing that a condominium association may be dissolved by agreement of 80% of the unit owners, unless a higher percentage is required in the master deed) is constitutional in the face of an attack upon the amendment to the statute as being violative of the contract clause of the federal constitution because of its expressly retroactive nature.

PARTIES TO THE PROCEEDINGS

All parties to this proceeding are listed in the caption.

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The denial of certification by the Supreme Court of the State of New Jersey is, as yet, unpublished and is reprinted in the Appendix hereto (App.) at 1a.

The opinion of the Superior Court of New Jersey, Appellate Division, is reprinted at App. 2a.

The opinion of the Superior Court of New Jersey, Chancery Division, is unreported and is reprinted at App. 4a.

The Order of the Superior Court of New Jersey, Chancery Division, is reprinted at App. 20a.

JURISDICTION

On February 4, 1985, petitioner filed a Verified Complaint and Order to Show Cause with the Superior Court of New Jersey, Chancery Division, alleging as unconstitutional the retroactive effect of Public Law 1985, c. 3, which amended *N.J.S.A.* 46:8B-26 to the end that condominium property could be removed from the provisions of the Condominium Act by agreement of at least 80% of the members of the condominium association, unless a higher percentage is required in the master deed.

Respondent filed an Answer and cross-moved for a declaration that the retroactive effect of the amendment was constitutional. On May 14, 1985, an Order and Judgment was entered by the Superior Court, Chancery Division, declaring that the retroactive effect of the statute was constitutional. (App. 20a). Petitioner appealed this decision to the Superior Court of New Jersey, Appellate Division, by way of a Notice of Appeal dated June 26, 1985. On June 18, 1986, the Superior Court, Appellate Division, issued its per curiam opinion affirming the judgment of the Superior Court, Chancery Division. (App. 2a).

Petitioner then filed a Notice of Petition for Certification with the Supreme Court of New Jersey on July 17, 1986. That petition was denied on October 7, 1986. (App. 1a).

The jurisdiction of this Court is invoked under 28 U.S.C. 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Article I, Section 10 of the United States Constitution provides that "no state shall. . .pass any. . .Law impairing the Obligation of Contracts. . . ."

N.J.S.A. 46:8B-26 was amended on January 8, 1985 by Senate Bill 2141. The amendment, which was expressly made retroactive, provided that a condominium property could be removed from the provisions of the Condominium Act by agreement of at least 80% of the votes of the unit owners unless a higher percentage is required by the master deed. Prior to amendment, the statute required agreement of all unit owners to remove a property from the provisions of the Condominium Act. Petitioner challenges the retroactive application of the amendment. The text of Senate Bill No. 2141, which was unanimously adopted by each House of the New Jersey Legislature and signed into law by the Governor as *N.J.S.A.* 46:8B-26, is set forth in the Appendix at App. 22a.

COUNTERSTATEMENT OF THE CASE

The relevant facts as found by the Trial Court are as follows:[1]

> The factual background that gives rise to this particular application and this lawsuit generally is essentially, at least for present purposes, undisputed. The plaintiff, which as I indicated, is a limited partnership, purchased a condominium unit in the premises

[1] Petitioner alleges various "facts" in its Statement of the Case which "facts" are not only irrelevant, but were not mentioned by the Trial Court in its opinion. Respondent does not concede the accuracy of any of those alleged facts.

known as the Seashore Club here in Atlantic City in June of 1984. The Seashore Club, like a number of condominiums in this City and elsewhere, was formerly a motel consisting, I believe, of one hundred units, primarily, if not exclusively, efficiency units, and was converted to a condominium pursuant to the statutes of the State of New Jersey.

Sometime in the early part of 1984 there was activity between the respective unit owners and the owners of a neighboring casino, the Golden Nugget, regarding the sale of these condominium units with the expectation that if the entire premises of the Seashore Club could be purchased, that it would be used for a certain expansion needed of that casino.[2]

There is some dispute as to who initiated this effort, but it does not matter for purposes of what the Court has to decide today. The fact is that the effort was commenced and quite successfully, and negotiations were completed with the overwhelming majority of the unit owners, and at the present this number has been changed since this lawsuit was initiated. But it will appear at least 85 of the

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[2] In June, 1984, the Executive Vice President of the Golden Nugget, Alfred J. Luciana, sent the letter referred to in petitioner's brief to all condominium owners. Inasmuch as this letter or its contents do not represent a material issue in the case *sub judice* (despite plaintiff's attempt to elevate it to such), and was never mentioned by the Courts below, respondent will not clutter the record with an interpretation of the letter and the context within which it was written.

100 units have already been titled in the defendant, Golden Nugget, and that contracts for all of the remaining units except one are expected shortly.

The one remaining unit for which there has been an inability to obtain a contract is the one which is owned by Derby Associates. Derby Associates is also the owner of a parking lot in the same vicinity, and there have been some negotiations between the parties in which an effort has been made to reach a sale of both the condominium unit and the parking lot, but that effort has thus far failed with the position of the parties being significantly apart in terms of price.

. . .[I]n January of 1985, the Governor of the State of New Jersey signed legislation which had been passed unanimously by both Houses of the Legislature amending the Condominium Act, and in particular that provision dealing with the steps necessary to complete a revocation of the condominium status. That is *N.J.S.A.* 46:8B-26. Under that amendment whereas there had previously been a requirement of 100% participation by all condominium unit owners in order to achieve a revocation, it would now be possible that such a step could be completed upon the agreement of at least 80% of the unit owners.

In completing that legislative step, New Jersey came into line with the recommendations of the National Committee on Uniform Laws, and the entity that is active in the condominium field, the name of which I

> cannot now recall for the moment, but I will mention it later in my opinion, again being a uniform law group dealing in particular with condominiums. It would appear that the legislative step that was just described was initiated in part, if not in whole, by the efforts of Martin Greenberg as counsel for the defendants and as a result of a recommendation by him to the members of the Senate and in particular, John Russo, who, I believe, sponsored this legislation. As I mentioned, however, initiated efforts, and the efforts met with unanimous approval of various legislators who are involved in the effort, and that it does, indeed, bring New Jersey into conformity with the recommendations of the group that I mentioned.
>
> This lawsuit was initiated thereafter in an effort in part to obtain a determination by this Court that the legislation was unconstitutional. App. 5a to App. 7a.

The Trial Court framed the issue as "one that seeks a determination regarding the constitutionality of that statutory amendment, and in particular that portion of the amendment that seeks to make its provisions retroactive." App. 7a.

The Trial Court ruled that the amendment to *N.J.S.A.* 46:8B-26 was constitutional. (App. 20a). The Appellate Division "[a]ffirmed substantially for the reasons expressed by Judge Gibson on April 25, 1986. . . ." (App. 2a). The New Jersey Supreme Court

denied certification by Order dated October 6, 1986. (App. 1a).[3]

SUMMARY OF ARGUMENT

This Court should deny petitioner's Petition for Writ of Certiorari because the question presented for review is neither special nor important and is not in conflict with the decisions of this or any other Court. Additionally, the question presented, in analogous circumstances, has already been answered by this Court in numerous cases to be discussed *infra*, as well as by the Third Circuit Court of Appeals. The decision in this case is in accord with those authorities. Specifically, the Trial Court properly applied the test as set forth in *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 74 L.Ed.2d 569, 103 S.Ct. 697 (1983), and found the amendment to the statute to be constitutional.

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[3] While not part of the record below, in its Statement of the Case, petitioner makes reference to a partition of the condominium facility. Respondent filed a Complaint for partition by sale in May of 1985. Respondent moved for summary judgment, which Motion was granted by the Court on January 28, 1986. Petitioner moved for a Stay of that Order, however that Motion was denied by the Trial Court by Order dated April 17, 1986. Appellate review of that decision was not sought by the petitioner. On July 29, 1986, the Trial Court entered a Judgment for Sale. The property was sold at a public sale where respondent was the highest bidder. Thereafter, a hearing was held at which time the sale of the property was confirmed by the Trial Court by Order dated October 24, 1986. Petitioner did not seek Appellate review of any of the Orders of the Trial Court regarding the partition sale.

REASONS WHY THE WRIT SHOULD BE DENIED

The question presented to the Courts below was whether retroactive legislation which provides that 80% of the unit owners in a condominium development may vote to remove the development from the confines of the Condominium Act, *N.J.S.A.* 46:8B-1 *et seq.*, satisfies the three prong test as enunciated in *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 74 L.Ed.2d 569, 103 S.Ct. 697 (1983), [and adopted by the New Jersey Supreme Court in *Edgewater Investment Associates v. Borough of Edgewater*, 103 N.J. 227, 510 A.2d 1178 (1986)].

The question on a Petition for Certiorari is whether the petitioner's arguments raise a substantial question as to the correctness of the decisions in the Courts below such that a question of general public importance is raised which requires this Court's supervision.

Respondents assert that the authorities relied on by the Courts below, particularly this Court's decision in *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 78 L.Ed.2d 569, 103 S.Ct. 697 (1983) and the Third Circuit Court of Appeals' decision in *Troy Ltd. v. Renna*, 727 F.2d 287 (3d. Cir. 1984) compel the conclusion that the retroactive application of *N.J.S.A.* 46:8B-26, as amended, is not violative of the contract clause of the Federal Constitution, and thus petitioner has not presented a question of general public importance which should be settled by this Court and the instant Petition for Certiorari should be denied.

Courts have long held that all statutes enjoy a strong presumption of constitutionality. *Male v. Renda*

Contracting, 64 N.J. 199, 314 A.2d 361 (1974). It is "well established that legislative Acts adjusting the burdens and benefits of economic life come to the Court with a presumption of constitutionality and the burden is on one complaining. . .to establish that the Legislature has acted in an arbitrary and irrational way." *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 15, 49 L.Ed.2d 752, 766, 96 S.Ct. 2882 (1976). This heavy burden results from the fact that a statutory challenge questions the expertise of the Legislature, which is presumed to act with reason and good discretion. *Restaurant Enterprises, Inc. v. Sussex Mutual Insurance Co.*, 52 N.J. 73, 243 A.2d 808 (1968). Indeed, this Court in examining the constitutionality of a legislative act, recently reaffirmed the principal that, ". . .when the Legislature has spoken, the public interest has been declared in terms well-neigh conclusive." *Hawaii Housing Authority, et al. v. Midkiff, et al.*, 467 U.S. 229, 81 L.Ed.2d 186, 104 S.Ct. 231 (1984) quoting from *Berman v. Parker*, 348 U.S. 26, 31, 99 L.Ed.2d 27, 75 S.Ct. 98 (1954). The Trial Court correctly held that this burden had not been met by petitioner. In his opinion placed on the record on April 25, 1985, he stated,

> It is, again, important to emphasize that in reaching that judgment, the strong presumption of constitutionality must be overcome by a clear showing of an abuse, or in the alternative a clear showing of arbitrariness, or a clear showing that the balance struck was so unreasonable as to fail constitutional muster.
>
> I am not satisfied that the burden has been established here, and accordingly I am con-

> vinced that this statute and its amendment is indeed constitutional and requires the support of this Court (App. 18a).

In a "contract clause" case:

> The question is not whether legislation affects contracts incidentally or directly or indirectly, but whether the legislation is addressed to a legitimate end and the measures taken are reasonable and appropriate to the end. *Home Building and Loan Association v. Blaisdell*, 290 U.S. 398, 437-38, 54 S.Ct. 231, 239-40 (1934).

As correctly held by the Courts below, the questioned legislation is reasonably addressed to a legitimate end, and plaintiff has failed to meet its heavy burden of proving abuse or arbitrariness by the Legislature.

The case of *Troy Ltd. v. Renna*, 727 F.2d 287 (3d. Cir. 1984) is substantially similar to the case at bar. In that case, the owners of an apartment complex which had been converted to condominium status sought to question the constitutionality of the New Jersey Senior Citizens and Disabled Protected Tenancy Act, codified at *N.J.S.A.* 2A:18-61.22 *et seq.* The Tenancy Act provided protected tenancy status to eligible senior citizens and disabled tenants where the building was transformed from a rental property to a condominium property. In particular, the owners of the building argued that the retroactive application of the Act in certain circumstances violated the contract clause. *See, N.J.S.A.* 2A:18-61.11(d). In essence, the condominium owners argued that the retroactive application of the Protected Tenancy Act deprived the

owners of the use of their condominiums as they saw fit, much as petitioner argues in the case at bar.

Relying on *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 74 L.Ed.2d 569, 103 S.Ct. 697 (1983), the Third Circuit had no doubt that the Tenancy Act was constitutional. The Court held that there was no substantial impairment of the contractual relationship, that there was a broad remedial purpose to the statute in protecting the mental and physical health of citizens who could suffer greatly by evictions and that it was proper for the Court to defer to the legislative judgment as to the necessity and reasonableness of the Act.

The Trial Court reached a similar decision in the case at bar. While the Trial Court held that the retroactive application of the amendment to *N.J.S.A.* 46:8B-26 operated as a substantial impairment of petitioner's rights, (although the Court recognized that "a significant and strong argument can be made to the contrary. . .however, that in reaching this conclusion I am at least in part influenced by the fact that I am satisfied that the second and third parts of this test can be met, and that the constitutional language on the federal level can be satisfied by the second and third inquiries that are necessary") (App. 13a), the Court held that the Legislature had a legitimate purpose in enacting this particular law, App. 13a. The Court noted the almost unanimity in the literature with regard to the desirability of a majority of the unit owners of a condominium development to be able to remove themselves from condominium status. Under the prior law, as has happened in the case at bar, one unit owner could attempt to blackmail the majority of the unit owners by attempting to thwart

the majority's ability to terminate the condominium association. The retroactive application of the amendment to *N.J.S.A.* 46:8B-26 eliminates that possibility of blackmail as to all condominium associations in this State, including the over 100,000 condominium units in existence prior to the enactment of the statute in question, and enables the majority of the unit owners to take steps to act in their best interests regarding their property.

While petitioner argues that it obtained traditional fee simple interests when it purchased its unit, this argument is without merit and was rejected by the Trial Court. The Court stated:

> . . .[A]gain reference can be made to the Condominium Act and what the reasonable expectations of the parties would have been. Because when one examines the contract rights and what might be considered "vested" and what loss may be considered as being manifestly unjust, again using one of the labels that is frequently seen, it is again helpful to recognize the heavy regulations that exist in the condominium field and the already existing significant restrictions on the individual rights of property owners in a condominium setting. It is simply a different animal and in some ways bears little resemblance to the classic ownership interest in real estate as it existed over the years.
>
> The definitions that have been used by the commentators in describing what a condominium is helps to identify in part that uniqueness.

As was mentioned in one of the quotes that was submitted by the plaintiff, a condominium is generally defined as an estate in real property consisting of a separate interest in a residential building on such real property together with an undivided interest-in-common in other portions of the same property. In its legal structure a condominium first combines elements from several concepts—unincorporated association, separate property, and tenancy in common—and then seeks to delineate separate privileges and responsibilities on the one hand from common privileges and responsibilities on the other.

. . .[I]ncluded within this point is the observation that when parties enter into contracts to purchase these units they recognize those limitations. Whether they think about them or not, they are presumed to understand them and proceed with full knowledge of them. They are also presumed to understand that given the regulations that they are in and given the fact that the rights that they enjoy are creatures of the Legislature and subject to continuing regulations that those rights may be modified from time to time.

One might question this for how realistic permanent expectation can be in the field of condominiums at all, and it is also important, I think, that assessing what has occurred here to remember that *condominiums do not have the same unique qualities as real estate.* Although in a sense there is a right not to sell that is common. Cases have identified this

> lack of uniqueness, including the Sencit (sic) Homes[4] case which is a case involving specific performance where specific performance was denied in the condominium setting, at least in part, because of lack of uniqueness, and as was pointed out by this Court in the Berkley Condominium case,[5] and that is to say that what can be realistically expected by contracting parties is significantly impacted by the considerations I just mentioned, and that is the regulated nature of this field. App. 16a-18a. (Emphasis added).

As has been stated by this Court:

> When [a party] purchased into an enterprise already regulated in the particular to which he now objects, *he purchased subject to further legislation* upon the same topic. (Emphasis added).

Energy Reserves, 459 U.S. at 411, 74 L.Ed.2d at 580, citing *Veix v. Sixth Ward Building & Loan Association*, 310 U.S. 32, 38, 84 L.Ed.2d 1061, 60 S.Ct. 792 (1940), in which the Court had upheld the validity of a statute retroactively modifying the method of withdrawal from a building and loan association. *See also, Berkley Condominium Association v. Berkley Condominium Residences, Inc.*, 185 N.J. Super. 313, 448 A.2d 510, 514 (Ch. Div. 1982) at 319-320, where

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[4] The correct citation is *Centex Homes Corp. v. Boag*, 128 N.J. Super. 385, 320 A.2d 194 (Ch. Div. 1974).

[5] *Berkley Condominium Association v. Berkley Condominium Residences, Inc.*, 185 N.J. Super. 313, 448 A.2d 510 (Ch. Div. 1982).

the Court applied the above principle to retroactive legislation affecting condominiums.

It is clear that petitioner's interest in a condominium is not coextensive with the bundle of rights enjoyed by the owner of a detached, single family dwelling, and in any event, the Legisiature has the power to modify those rights for a legitimate public purpose without running afoul of constitutional prohibitions.

As identified by the Trial Court, the legitimate public purpose underlying the statute in issue is as follows:

> . . .[w]hat the State of New Jersey here concluded was that the danger of enabling a single individual to force the will of the overwhelming majority and to create the act to blackmail all or one co-owner was a danger that justifies the removal in a limited way of the right that I had previously identified. That is the right to decide not to sell. App. 14a.

Balancing petitioner's loss of the right to decide not to sell against the possible threat of blackmail by one unit owner both the Trial Court and the Appellate Division held that the public interest in permitting a majority of unit owners to terminate a condominium overroad the loss to one unit owner of his right not to sell. Furthermore, in accordance with this Court's statement in *Energy Reserves,* the Trial Court "properly [deferred] to legislative judgment as to the necessity and reasonableness of a particular measure" (App. 14a). Accordingly, the legislation was held to be constitutional.

While petitioner argues, as it did below, that the cases of *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 57 L.Ed.2d 727, 98 S.Ct. 2716 (1978), *U.S. Trust Co. v. N.J.*, 431 U.S. 1, 52 L.Ed.2d 92, 97 S.Ct. 1505 (1977), *Treigle v. Acme Homestead Association*, 297 U.S. 189, 80 L.Ed. 575, 56 S.Ct. 408 (1936), *W. B. Worthen & Co. v. Thomas*, 292 U.S. 426, 78 L.Ed. 1344, 54 S.Ct. 816 (1934) and *W. B. Worthen & Co. v. Kavanaugh*, 295 U.S. 56, 79 L.Ed.2d 1298, 55 S.Ct. 555 (1935) are controlling authorities, those cases, as the Courts below held, are readily distinguishable and simply do not provide guidance in the case at bar.

U.S. Trust Co. v. N.J., 431 U.S. 1, 52 L.Ed.2d 92, 97 S.Ct. 1505 (1977) involved a contract *between two states* and *not* between a state and a private individual or two private individuals. Accordingly, the Court applied a higher standard of scrutiny than is applicable in the case at bar. The case of *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 57 L.Ed.2d 727, 98 S.Ct. 2716 (1978) is also inapplicable. The Minnesota law which was struck down in that case did not operate in an *area already subject to state regulation* at the time the contractual obligations were originally undertaken, and the law was not even purportedly enacted to deal with a broad, generalized economic or social problem. The legislation at issue in the case at bar deals with a minor change in an already highly regulated area. Accordingly, the *Spannaus* case simply does not apply to the situation at bar. *See, Troy Ltd. v. Renna*, 727 F.2d 287, 299 (3d. Cir. 1984).

In *W. B. Worthen Co. v. Thomas*, 292 U.S. 426, 78 L.Ed. 1344, 54 S.Ct. 816 (1934) the Court struck down as violative of the contract clause a statute

which exempted the proceeds of life insurance policies from judicial process to secure the payment of any debt. The Court held that the statute substantially impaired the contractual relationship since it contained "no limitations as to time, amount, circumstances or need." 292 U.S. at 434, 78 L.Ed. at 1347. The Court further held that the relief afforded by the statute did not have a reasonable relation to the legitimate end to which the State is entitled to direct its legislation. 292 U.S. at 432-433, 78 L.Ed. at 1347.

Similarly, *W. B. Worthen Co. v. Kavanaugh*, 295 U.S. 56, 79 L.Ed. 1298, 55 S.Ct. 555 (1935), is a case where the change in the statute left mortgagees without any effective remedy. The Court stated that "so viewed [the changes in the statute], they are seen to be an oppressive and unnecessary destruction of nearly all the incidents that give attractiveness and value to collateral security." 295 U.S. at 62, 79 L.Ed. at 1302. Clearly, the changes in the statute operated as substantial impairments to the contractual relationship. While the statutory changes were purportedly enacted in the face of an emergency "which was stated to endanger the peace, health and safety of a multitude of citizens", 295 U.S. at 59, 79 L.Ed. at 1301, the practical nullification of the rights of mortgagees resulted in the statutory changes being held to be violative of the contract clause.

In *Treigle v. Acme Homestead Association*, 297 U.S. 189, 80 L.Ed. 575, 56 S.Ct. 408 (1936), the statutory changes at issue, as a practical matter, prohibited a member of a building and loan association from being able to withdraw his investment. The Court held that the statutory changes operated as a substantial impairment of the contractual relationship, that the state

did not have a significant and legitimate public purpose behind the statute, and that the statutory changes were arbitrary and oppressive. Accordingly, the statute in issue was struck down.

Petitioner attempts to distinguish *Energy Reserves* on the basis that the legislation in question in that case was a temporary measure. This attempted distinction is without legal basis as this Court has previously stated "that the public purpose [of the legislation in question] need not be addressed to an emergency or temporary situation." *Energy Reserves,* 459 U.S. at 412, 74 L.Ed.2d at 581. (Citations Omitted).

CONCLUSION

The cases relied upon by petitioner are distinguishable because in those cases the questioned legislation substantially affected the contractual relationship without having any significant or legitimate public purpose. In this case the Courts below correctly found that a legitimate public purpose was served by amending the Condominium Act to provide that less than a unanimous vote of the unit members would be required to remove a condominium association from the Act. Furthermore, the Courts below correctly applied the three prong test set forth in the *Energy Reserves* case and there is no substantial question as to the correctness of those decisions. The question presented by petitioner is neither special nor important and is not in conflict with the decisions of this or any other Court. Therefore, the Petition for Certiorari should be denied.

Respectfully submitted,

STEPHEN N. DRATCH*
MARTIN L. GREENBERG
GREENBERG, MARGOLIS, ZIEGLER,
SCHWARTZ, DRATCH, FISHMAN,
FRANZBLAU & FALKIN, P.A.
Three ADP Boulevard
Roseland, New Jersey 07068
(201) 992-3700
Counsel for Respondents

**Counsel of Record*

APPENDIX

SUPREME COURT OF NEW JERSEY
C-159 SEPTEMBER TERM 1986

25,930

DERBY ASSOCIATES, etc., *Plaintiff-Petitioner,*	:	
vs.	:	ON PETITION FOR CERTIFICATION
SEASHORE CLUB CONDOMINIUM ASSOCIATION, INC., etc., et al, *Defendants-Respondents.*	:	

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-4809-84T7 having been submitted to this Court, and the Court having considered the same:

It is ORDERED that the petition for certification is denied with costs.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 6th day of October, 1986.

Clerk of the Supreme Court

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-4809-84T7

DERBY ASSOCIATES, a partnership of the State of New Jersey

Plaintiff-Appellant,

v.

SEASHORE CLUB CONDOMINIUM ASSOCIATION, INC., a corporation of the State of New Jersey; THE BOARD OF TRUSTEES OF SEASHORE CONDOMINIUM ASSOCIATION, INC., and GNOC CORP. t/a GOLDEN NUGGET, a corporation of the State of New Jersey, and GOLDEN NUGGET, INC., a Nevada Corporation, j/s/a,

Defendants-Respondents.

—

Argued June 9, 1986 — Decided June 18, 1986

Before Judges Morton I. Greenberg, J. H. Coleman and Long.

On appeal from the Superior Court, Chancery Division, Atlantic County.

Howard E. Drucks argued the cause for appellant (McGahn, Friss & Miller, attorneys; Mr. Drucks on the brief).

Martin L. Greenberg argued the cause for respondents (Greenberg, Margolis, Ziegler, Schwartz, Dratch & Fishman, attorneys; Mr. Greenberg, of counsel; Stephen M. Holden, on the brief).

PER CURIAM

The order and judgment on May 14, 1985 is affirmed substantially for the reasons expressed by Judge Gibson on April, 25, 1986 with the following reservation. Judge Gibson indicated that a condominium cannot exist at common law and thus is of statutory creation. While it is undoubtedly true that the rights of condominium owners are regulated by statute, we are not necessarily in agreement that at common law prior to the enactment of condominium legislation parties could not create condominiums. However, as we do not regard that statement by Judge Gibson as necessary to his decision it does not impact on our result.

Affirmed.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
COUNTY OF ATLANTIC
Docket No. C-1435-85-E

DERBY ASSOCIATES, a partnership of the State of New Jersey, *Plaintiff,*	:	TRANSCRIPT OF
vs.	:	OPINION
SEASHORE CLUB CONDOMINIUM ASSOCIATION, INC., a corporation of the State of New Jersey; THE BOARD OF TRUSTEES OF SEASHORE CONDOMINIUM ASSOCIATION, INC., and GNOC CORPORATION t/a GOLDEN NUGGET, *Defendants.*	:	Date: April 25, 1985

BEFORE:
L. ANTHONY GIBSON, JSC

APPEARANCES:

GREENBERG, MARGOLIS, ZIEGLER & SCHWARTZ, ESQS.
Attorneys for GNOC & Nugget
By: Martin L. Greenberg, Esq.

MCGAHN, FRISS & MILLER, ESQS.
Attorneys for Plaintiff
By: Patrick McGahn, Esq. and
Howard Drucks, Esq.

FRED P. CAMPO, OCR

THE COURT: Today is the adjourned day of an Order To Show Cause arising out of efforts by the plaintiff, Derby Associates, a partnership of the State of New Jersey, to obtain certain preliminary restraints regarding actions by the defendant, Seashore Club Condominium Association, Inc., and others.

As part of that effort, and as a result of a cross-motion for Summary Judgment which has been filed by the defendant, Seashore Club Condominium, et als, it is necessary for the court to decide whether a recent amendment to the Condominium Act is constitutional.

As part of that same inquiry, the court has also been asked to review a Resolution that was passed by the Condominium Association in September of 1984 which initiated certain steps regarding the termination of the Seashore Club Condominium.

The factual background that gives rise to this particular application and this law suit generally is essentially, at least for present purposes, undisputed. The plaintiff, which as I indicated, is a limited partnership, purchased a condominium unit in the premises known as the Seashore Club here in Atlantic City in June of 1984. The Seashore Club, like a number of condominiums in this City and elsewhere, was formerly a motel consisting, I believe, of one hundred units, primarily, if not exclusively, efficiency units, and was converted to a condominium pursuant to the statutes of the State of New Jersey.

Sometime in the early part of 1984 there was activity between the respective unit owners and the owners of a neighboring casino, the Golden Nugget, regarding the sale of these condominium units with the expectation that if the entire premises of the Seashore Club could be purchased, that it would be used for a certain expansion needed of that casino.

There is some dispute as to who initiated this effort, but it does not matter for purposes of what the court has to decide today. The fact is that the effort was commenced and quite successfully, and negotiations were completed with the overwhelming majority of the unit owners, and at the present time this number has been changed since this law suit was initiated. But it will appear at least eighty-five of the one hundred units have already been titled in the defendant, Golden Nugget, and that

contracts for all of the remaining units except one are expected shortly.

The one remaining unit for which there has been an inability to obtain a contract is the one which is owned by Derby Associates. Derby Associates is also the owner of a parking lot in the same vicinity, and there have been some negotiations between the parties in which an effort has been made to reach a sale of both the condominium unit and the parking lot, but that effort has thus far failed with the position of the parties being significantly apart in terms of price.

On September 3rd, 1984, the Condominium Association met and approved by a majority vote a number of actions that eventually resulted in the revocation of the condominium status of this building, and presumably its sale under the various agreements that were being negotiated with the Golden Nugget. That Resolution also authorized the Board of Trustees to institute litigation against any member of the Association who refused to sign an agreement so that presumably that litigation, if successful, would have achieved the goal of that determination by the Association.

It was also agreed at that time to amend the Master Deed to give the Board of Directors the right to terminate the condominiums upon the vote of eighty percent of unit owners and to authorize the sale, lease, grant or license of the common elements and to permit the disassemblage of some of those common elements, or all of them, as part of that effort.

In January of 1985, the Governor of the State of New Jersey signed legislation which had been passed unanimously by both Houses of the Legislature amending the Condominium Act, and in particular that provision dealing with the steps necessary to complete a revocation of the condominium status. That is N.J.S.A.46:8b-26. Under that amendment whereas there had previously been a requirement of one hundred percent participation by all condominium unit owners in order to achieve a revocation, it would now be possible that such a step could be completed upon the agreement of at least eighty percent of the unit owners.

In completing that legislative step, New Jersey came into line with the recommendations of the National Committee on Uniform Law, and the entity that is active in the condominium field, the name of which I cannot now recall for the moment, but I will mention it later in my Opinion, again being a uniform law group dealing in particular with condominiums. It would appear that the legislative step that was just described was initiated in part, if not in whole, by the efforts of Martin Greenberg as counsel for the defendants and as a result of a recommendation by him to the members of the Senate, and in particular, John Russo, who, I believe, sponsored this legislation. As I mentioned, however, initiated efforts, and the efforts met with unanimous approval of various legislators who were involved in the effort, and that it does, indeed, bring New Jersey into conformity with the recommendations of the group that I mentioned.

This law suit was initiated thereafter in an effort in part to obtain a determination by this court that that legislation was unconstitutional.

Passing from those brief factual elements that bring this matter to the court's attention, let me now identify the legal issues with some additional particularity.

As I have mentioned, the primary issue is the one that seeks a determination regarding the constitutionality of that statutory amendment, and in particular that portion of the amendment that seeks to make its provisions retroactive.

Assuming the court determines that it is unconstitutional, certain consequences flow. Even if the court does not determine that it is unconstitutional, there is a separate question as to whether the Resolution that was enacted by the Association back in September of 1984 was valid and in conformity with the law.

As part of the sub issues involved in the constitutional question, there are a number of things that need to be addressed. Primarily, what needs to be addressed is the assertion by the plaintiff that the retroactive nature of this legislation is unconstitutional under the contract laws of both the federal constitution and the constitution of the State of New Jersey. Those provisions are Article I, Section 10 of the United States Constitution, and Article IV, Section 7, paragraph three of the New

Jersey Constitution. Both of those provisions bear similar language and have basically the same input. Their interpretations are parallel in both state and federal courts.

Basically, those provisions say that the legislature should not pass any law impairing objectives of contracts. The broad language of those provisions, however, is highlighted by the many exceptions that have been developed over the years since those provisions were originally adopted.

The analysis that this court must make of whether those exceptions cover the circumstances before this court require some division of attention between the federal and the state constitutional provisions.

Beginning with the federal constitution, it is, I think, perhaps helpful to mention that the law in this area has changed somewhat over the years and evolve in a way that does have some impact on the approach this court must take to the resolution of this quesiton. Before reviewing that history briefly, however, let me mention what the framework is with which this court begins in assessing these various questions. What I am referring to is the burden that plaintiff has in establishing unconstitutionality. The plaintiff in this case, as in any case who seeks to declare legislation of this state or in any state unconstitutional, bears a heavy burden because the court begins with the strong presumption of constitutionality. This is true whether one is talking about a statute that is prospective in nature, or one which is retroactive as this one.

When the court is dealing with economic and social legislation, which is what that is, it is customary for the court to defer to the legislative judgment that had been made regarding the value and the wisdom of that legislative effort.

New Jersey Courts have long held that all statutes enjoy a strong presumption of constitutionality, and the plaintiff's burden is to establish with clarity that that presumption has been overcome in order to achieve a successful result.

As some of the cases have said, before that presumption can be overcome a court must be satisfied that the balance in favor

of constitutionality is clear and beyond a reasonable doubt. Citations for the proposition that I have just mentioned are numerous, but let me mention some: Raybestos-Manhattan, Inc. v. Glaser, 144 N.J.S. 152, a chancery division case decided in 1970, United Advertising Corporation v. Borough of Metuchen, 42 N.J. 1. The Berkley Condominium case decided by this court, with full citation being The Berkley Condominium Association v. The Berkley Condominium Residences, 185 N.J.S. 313, a chancery decision 1982.

Having stated that framework, let me now pass to the federal case law on this subject. As I indicated, the law has evolved in this area in a way that has some impact on the outcome here. Initially, and even to this day, some distinction has been drawn by the federal case law when dealing with contracts in which a state is a part as opposed to contracts between private individuals. The difference has been one of degree of deference.

The case law that has been cited in this case in oral argument, which I will mention again here today, outlines that development, and I am referring to cases such as Energy Reserves Group, Inc. v. Kansas Power & Light, 103 Supreme Court 697, Allied Structural Steel Co. vs. Spannaus, 438 U.S. 234, (1978) Supreme Court case, and most recently the case of Troy Limited v. Renna, 727 Federal 2d 287, (1984).

The point to be made about that evolution is that with respect to private contracts as opposed to those involving the State itself, or subdivisions thereof, the court has over the years enlarged the degree of deference accorded to the legislative efforts that are made as part of the regulations of what private people can do with respect to contract rights.

I have not mentioned it so far, but probably the turning point in that development was the Blaisdell case, or the case known as Home Building & Loan Association v. Blaisdell, 290 U.S. 398, (1934) case. The other cases that I have mentioned are really the progeny of Blaisdell.

As the court in Troy points out: "Under these post-Blaisdell authorities, the contract clause placed only limited inhibitions on

the ability of state legislatures to address significant social problems by legislation affecting existing contractual undertakings between parties."

The Troy case is also beneficial in taking this court to the so-called three part test that must be examined in order to determine whether or not under the federal contract clause provision, that is the federal constitutional contract clause provision, the presumption previously mentioned has been overcome. And as the court in Troy mentions, the threshhold inquiry under that three-part test is first to determine whether or not the law has operated "as a substantial impairment of a contractual relationship."

If the state law is found to be a substantial impairment, the second inquiry that is required is whether the State has established a significant and legitimate public purpose behind the regulation, such as the remedying of a broad and general social or economic problem.

Finally, if such a legitimate public purpose is identified, a third query is posed. The next inquiry is whether the adjustment of the rights and responsibilities of contracting parties is based upon reasonable conditions and is of a character appropriate to the public purpose justifying the legislation's adoption.

That third area has been further refined as follows: "Unless the State itself is a contracting party—" which it is not here in the case before me— "as is customary in reviewing economic and social regulation, courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure."

Passing now to an examination of the three-part test just mentioned, the first judgment that must be made is whether or not the impairment that occurs and is before the court can be considered substantial regarding the contractual relationship effected. If the court determines that that impairment is not substantial, the inquiry ends at that point, and the provisions under inquiry would then be found to have overcome the challenge.

Determining whether the impairment here is substantial, it is necessary to examine what it is that has occurred. And, of course, as can be determined inquiry by examining the oral argument in this case, there can be significant disagreement as to

what, if any significance, has occurred here that would impact on the contractual relationship.

There is a substantial question as to what the contract really is that is being impaired, and whether the contract is being impaired at all, at least as between the contracting parties.

In order to answer this question it is necessary to examine the Condominium Act of New Jersey because the Condominium Act of New Jersey really creates and regulates quite heavily what the purchasers of condominium units can do with their units and can expect in this area. This same regulation, particularly given the breath of it, impacts on other issues the court has to address, but for the moment I mention it because it helps to identify the rights which the parties might have expected to have in this setting, and then determine what of those rights has been lost by this provision, assuming it is enforced.

I will not in this examination attempt to identify everything that the legislation has said can and cannot be done. It is sufficient, I think, to point out that a condominium itself cannot exist at common law. There was no such property right in existence until the legislature of this state said that it did. When the legislature of this state said that it did, it created a hybrid form of property ownership because it combines a number of aspects of communal living with the individual rights that every property owner should traditionally have in a real estate field but with certain, of course, limitations.

For example, in purchasing a condominium unit, although the purchaser obtains a fee interest which is exclusive, that fee interest is subject to a number of communal aspects which control the enjoinment of that fee interest. The common elements are obvious examples and how those common elements are used and the degree to which individual unit owners can enjoy them is a subject which is one which can be changed and frequently is changed by the majority vote of the condominium association which is created as part of that ownership interest.

If this statute is constitutional, therefore, what will be created is that although the unit owner will still have the right to sell, the right to own, and the right to enjoy a particular unit, and will also have the right to receive fair value for that unit in the

case of a sale. What will be lost is the right to refuse to sell in face of overwhelming wishes of the other unit owners within the association of which that unit owner is a part.

The question then is whether that loss is substantial, whether it represents "substantial impairment" under the federal test that I had mentioned.

It is difficult, frankly, to deal with this question in the condominium setting and to attempt to divorce one's self from the traditional notion that we have about ownership in real estate. We traditionally think that among the various rights that one has as an owner of a piece of real estate, includes not only the right to sell it and to obtain fair value for it—I am talking about market value—but there is also the right not to sell.

Many people do not value their ownership interest in a particular piece of real estate by what they can get for it if they sell it, and as has been held by our court over the years, there is a unique quality to real estate that makes it special. And I think that unique quality helps to explain why the same courts have granted specific performance in situations where it would not otherwise be available. The point being that value is not always measured in money. Location, history, other things impact on a person's valuation of the worth of a particular piece of property.

So in that sense a loss through this legislation of that right in face of an overwhelming view of your condominium owner is a significant and substantial loss.

One could question, however, how significant do we measure against the other losses that one assumes when one goes into that type of ownership effort to begin with? And as I have already indicated, this is a highly regulated field, and it is a field where owners are subject to the desires of the majority in a number of significant areas.

I should also mention on this same subject that even in the private real estate field, which this is not, at least not in the classic sense, owners of real estate are not unfettered in their ability to sell or not sell. And dispite the value elements that I have mentioned and as unique as it is, there are many examples of situations that reflect that that is simply not an unfettered right. That right is subject to a number of police power controls

and other private interests. For example, zoning and other police power regulations can affect the manner in which you use your property. It can in some cases destroy that use entirely, subject only to compensation under fair market value.

Such controls, however, have long been held to be constitutional. Ownership of private real estate can begin with others, such as when one owns property as joint tenants or as tenants in common. Although all of the elements that traditionally attach to the ownership fee interest exist in such a setting, a co-tenant can seek and succeed in a partition action and force the sale of that property dispite all of the things that I have mentioned.

I mentioned that backdrop only to put in prospective what I think the reasonable expectation of parties are when they own real estate and when they entered into contracts to purchase it, and I put it out to show that there is a good deal of precedence that impacts on whether the impairment here really is or is not substantial.

In conclusion on this subject, however, although I recognize that a significant and strong argument can be made to the contrary and one that I think that be readily supported, I would nevertheless choose to conclude that the impairment here is substantial. That is that the loss of the right to retain as opposed to sell is a substantial property right, and that the contractual relationship is substantially impaired by its loss. I think the reasonable expectation of the parties would have included that right, and I think it is a substantial right. The fact that the Condominium Act itself had previously contained a reference to that I think underscores this position.

I must confess, however, that in reaching this conclusion I am at least in part influenced by the fact that I am satisfied that the second and third parts of this test can be met, and that the constitutional language on the federal level can be satisfied by the second and third inquiries that are necessary.

I am referring to the fact that I have concluded that there is a legitimate purpose that has been identified by this legislation and that the State has established by the background that is available to me here that there is a significant and legitimate public purpose behind this regulation.

What aided the State of New Jersey in its adoption of the Uniform Act was the experience of others and the broad compensation that has existed in this field by those who expressed opinions on it over the years since the original creation of the concept of condominiums. The various law review articles and academic commentaries in this field have been fairly unanimous in recommending in favor the type of change that New Jersey has adopted by this amendment.

Plaintiff's brief outlines a number of those sources, including a commentary of former Dean Patrick J. Rohan of St. John's University. And in referring to his law review article on the subject in the Columbia Law Review, he also makes reference to the Model Condominium Code, which is a result of an effort by an additional group of people who are active and knowledgeable in this field who likewise have identified that danger and evil that they felt existed when the effort to decondominimize can be restricted by a single or few individuals.

What those commentators had concluded and what the State of New Jersey here concluded was that the danger of enabling a single individual to force the will of the overwhelming majority and to create the act to blackmail all or one co-owner was a danger that justifies the removal in a limited way of the right that I had previously identified. That is the right to decide not to sell.

Given the fact that this is social legislation, the fact that it impacts on economic concerns, triggers a kind of deference that the federal and the state cases refer to. The reasonableness of that judgment has been brought into question here and requires an additional inquiry by the court, and I will speak more to that when I review this question from the point of view of state constitution. For the present purpose it is sufficient to repeat what the court said in Troy and what has been said in the Energy Reserve Group case, and that is as customary in reviewing economic social legislation the court "properly defers to legislative judgment as to the necessity and reasonableness of a particular measure."

As I will repeat when dealing with this from the prospectus of state constitution, it is important to remember that in examining that question and in exercising that deference the court is not reexamining the issue in a way which would substitute the court's judgment for that of the legislature. The legislature is the appropriate entity for making those judgments and determining whether that choice was or was not reasonable. The scope of review by a court is much more limited and not only begins with the presumption that I have already mentioned, but it also requires that before the court overturns that presumption that it be satisfied that the unreasonableness of that choice be clear, and that the impediment outweighs the benefits clearly, and in some cases say beyond a reasonable doubt.

Whether one approaches this from the state's prospectus or the federal prospectus, I do not think it can be fairly said here that if there is a balance that is unreasonable, that unreasonableness is clear. Certainly it cannot be suggested that the choice was an arbitrary one by the legislature or it was without a factual base. Given the almost unanimity in the literature on this subject, it is difficult to suggest that New Jersey was being arbitrary in choosing to conform to that literature.

Accordingly, it is my judgment that based on the federal constitutional provisions, contract clause of the federal constitution, that the three-prong test has been met in that although I identified a substantial impairment for purposes of this opinion, that impairment was nevertheless outweighed by the other considerations that I mentioned, at least given the standard that I feel applies here.

Let me pass now to the New Jersey Constitution. Under the New Jersey Constitution the approach is not as regimented, but it involves the same type of considerations. The language that has been used by the cases over the years is somewhat different, and when I refer to cases, I am including the case of Gribbons v. Gribbons, 86 N.J.513, Burton v. Sills, 53 N.J.86, and the Berkley case that I referred to earlier and others.

Some of the guidelines that are contained in those cases use labels such as "vested rights, manifest injustice, and fundamental fairness." Those labels, however, are somewhat difficult to apply with great specificity.

Again, what is necessary is identification as a right that is being lost and to look at the balance that was struck between that loss and what the legislature identified as having been gained.

One of the commentaries that has been included in our Supreme Court pronouncement in this area and I think it's worth quoting. The court said on this same subject: "The most that can be said with respect to the proofs is that reasonable men that disagree as to whether the addition of what was at stake there would serve the general welfare. Such policy questions are committed to the judgment of the legislature." And this is a loose quote: "As we have said so many times with respect to zoning and other quasi-legislative decisions, a Judge may not interfere merely because he would have made a different policy decision if the power to decide had been his. A court can concern itself only with an abuse of delegated legislative power and may set aside the legislative judgment only if arbitrariness clearly appeared."

The question then becomes whether or not this court can say that arbitrariness clearly appears here as a result of the judgment made by the legislature of this State and by the Governor of this State in passing the Amendment that I have mentioned.

It is my judgment that such a conclusion cannot fairly be reached. As part of this same inquiry, again reference can be made to the Condominium Act and what the reasonable expectations of the parties would have been. Because when one examines the contract rights and what might be considered "vested" and what loss may be considered as being manifestly unjust, again using one of the labels that is frequently seen, it is again helpful to recognize the heavy regulations that exist in the condominium field and the already existing significant restrictions on the individual rights of property owners in a condominium setting. It is simply a different animal and in some ways bears little resemblance to the classic ownership interests in real estate as it existed over the years.

The definitions that have been used by the commentators in describing what a condominium is helps to identify in part that uniqueness.

As was mentioned in one of the quotes that was submitted by the plaintiff, a condominium is generally defined as an estate in real property consisting of a separate interest in a residential building on such real property together with an undivided interest-in-common in other portions of the same property. In its legal structure a condominium first combines elements from several concepts — unincorporated association, separate property, and tenancy in common — and then seeks to delineate separate privileges and responsibilities on the one hand from common privileges and responsibilities on the other.

That by the way is a quote from 31 CJS Estates, Section 146.

A separate but not too dissimilar quote is contained in a writing of Dean Rohan in the Law Review Article that I previously mentioned.

Included within this point is the observation that when parties enter into contracts to purchase these units they recognize those limitations. Whether they think about them or not, they are presumed to understand them and proceed with full knowledge of them. They are also presumed to understand that given the regulations that they are in and given the fact that the rights that they enjoy are creatures of the legislature and subject to continuing regulations that those rights may be modified from time to time.

One might question this for how realistic permanent expectation can be in the field of condominiums at all, and it is also important I think that assessing what has occurred here to remember that condominiums do not have the same unique qualities as real estate. Although in a sense there is a right not to sell that is common. Cases have identified this lack of uniqueness, including the Sencit Homes Case, which is a case in specific performance where specific performance was denied in the condominium setting, at least in part, because of lack of uniqueness, and as was pointed out by this court in the Berkley condominium case, and that is to say that what can be realistically expected by

contracting parties is significantly impacted by the considerations that I just mentioned, and that is the regulated nature of this field.

In sum, dealing now with the constitutional examination, it is my judgment that the deference that the legislation is entitled to here is one which overcomes and outweighs the concern that otherwise exists on the part of this court with respect to the deprivation of rights that these contract holders had.

It is, again, important to emphasize that in reaching that judgment the strong presumption of constitutionality must be overcome by a clear showing of an abuse, or in the alternative a clear showing of arbitrariness, or a clear showing that the balance struck was so unreasonable as to fail constitutional muster.

I am not satisfied that that burden has been established here, and accordingly I am convinced that this statute and its amendment is indeed constitutional and requires the support of this court.

In reaching that conclusion I do not seek to match my judgment as to what would or would not have been the appropriate balance to be struck by the legislature in reaching this particular position, but rather I defer to that judgment, and also conclude that there has been no showing it is clearly wrong or unreasonable, nor has there been any showing there was not a factual support for the conclusions that were made by the legislature.

Accordingly, the motion for a partial summary judgment that has been pursued by the defendants is granted. That judgment does not, however, end the matter, and in particular a response is required to the question of the bona fides of the resolution of November the 3rd, 1984.

It is my judgment in that regard that that resolution should be stricken as being improper, as being not in conformity with the law as existed in 1984. The determination made then were, in fact, opposed to the legislation that then existed under the Condominium Act insofar as they sought to dissolve or revoke based on eighty percent. Obviously, legislation has now changed. It's retroactivity applies to this contract, and the Condominium Association has agreed to re-examine this question

and to act on the same subject if it chooses to do so, which I assume it will.

Having reached these conclusions, the plaintiff is entitled to certain limited injunctive reliefs pending further action by the Condominium Association. I don't know as a practical matter what that would necessitate beyond that which this court has already done by way of the preliminary order that was entered at the time that this matter was initially before me.

Frankly, I do not think that anything else is required, but I do believe that the Order should continue pending any further action by the Condominium Association, and any further efforts that may be necessary in the way of a judgment of partition if that is required.

In closing, I would like to meet with the attorneys briefly so I can determine what they view to be any remaining attention that the case will require by the court beyond today's hearing.

I also want to mention another observation. That is that there were difficult questions that were involved in this case and I was very much appreciative of the input that I received from counsel. The briefs were very good, and the oral argument I thought was exceptionally good, and I want to compliment both Mr. Drucks and Mr. Greenberg on their presentations because it was very helpful to the court.

Also, on the record, I wish to reserve the right to expand my opinion in the event of an appeal, or convert it to writing if I choose to do so.

* * *

I, Fred P. Campo, an Official Court Reporter of the State of New Jersey, certify that the foregoing is a true and accurate transcript as taken from my stenographic notes.

Date: 5-28-85

/s/ Fred P. Campo

FRED P. CAMPO, OCR

GREENBERG, MARGOLIS, ZIEGLER AND SCHWARTZ
P.A.
THREE A. D. P. BOULEVARD,
ROSELAND, N. J. 07068
(201) 992-3700
ATTORNEYS FOR DEFENDANTS, GNOC CORP. AND GOLDEN NUGGET, INC.

DERBY ASSOCIATES, a partnership of the State of New Jersey, *Plaintiff*	:	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION ATLANTIC COUNTY *Docket No.* C-1435-85E
vs.	:	
SEASHORE CLUB CONDOMINIUM ASSOCIATION, INC., a corporation of the State of New Jersey; THE BOARD OF TRUSTEES OF SEASHORE CONDOMINIUM ASSOCIATION, INC., and GNOC CORP. t/a GOLDEN NUGGET, a corporation of the State of New Jersey, GOLDEN NUGGET, INC., a Nevada Corporation, j/s/a. *Defendant*	:	CIVIL ACTION ORDER AND JUDGMENT

This matter having been opened to the Court by way of Order to Show Cause brought by McGahn, Friss & Miller, Esqs., (Patrick T. McGahn, Jr., Esq. and Howard E. Drucks, Esq. appearing), attorneys for the plaintiff, and by Cross-Motion for Summary Judgment brought by Greenberg, Margolis, Ziegler & Schwartz, P.A. (Martin L. Greenberg, Esq. and Jeffrey D. Light, Esq., appearing), attorneys for defendants, GNOC, Corp. and Golden Nugget, Inc.; Rothenberg, Hyett &

Eisen, Esqs. (Robert Lang, Esq., appearing), attorneys for defendants, Seashore Club Condominium Association Inc., and Board of Trustees of Seashore Condominium Association, Inc., and having considered the papers presented and having heard argument of counsel and for good cause appearing, now, therefore,

IT IS on this 14th day of May, 1985

ORDERED that the application by the plaintiff for a declaration that the retroactive application of P.L. 1985, c. 3, amending N.J.S. 46:8B-26 is unconstitutional is denied and, it is further

ORDERED that the application by the plaintiff for temporary, interlocutory and permanent injunctive relief prohibiting the defendants from filing a Deed of Revocation not containing the signatures of each of the condominium owners, is denied and, it is further

ORDERED that the application by the plaintiff for a declaration that the September 3, 1984 amendment to the Seashore Club condominium Master Deed giving the defendant Board of Directors of the Seashore Club Condominium Association the right to terminate the condominium upon the affirmative vote of 80% of the unit owners is invalid is granted and, it is futher

ORDERED that the Motion for Partial Summary Judgment by the defendants for a declaration that the retroactive application of P.L. 1985, c. 3, amending N.J.S. 46:8B-26, is constitutional, is granted and, it is further

Ordered and adjudged that P.L. 1985, c. 3, amending N.J.S. 46:8B-26 is consititutional.

HON. L. ANTHONY GIBSON, J.S.C.

SENATE, NO. 2141

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 13, 1984

By Senator RUSSO

Referred to Committee on Judiciary

AN ACT concerning condominum properties and amending P. L.

1969, c. 257.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 26 of P. L. 1969, c. 257 (C. 46:8B-26) is amended to read as follows:

26. Any condominum property may be removed from the provisions of this act by *agreement of unit owners of units to which at least 80% of the votes in the association are allocated, or any larger percentage that the master deed or any amendment thereto specifies. Termination shall be effective upon the filing of* a deed of revocation duly executed by [all] unit owners of *units to which at least 80% of the votes in the association are allocated, or any larger percentage that the master deed or any amendment thereto specifies* or the sole owner of the property [and the holders of all mortgages or other liens affecting all units] and recorded in the same office as the master deed.

2. This act shall take effect immediately and shall apply to all condominiums heretofore or hereafter created pursuant to P. L. 1969, c. 257 (C. 46.8B-1 et seq.).

STATEMENT

This bill will bring New Jersey law with regard to the percentage of ownership needed to terminate a condominium into conformity with the applicable provision of the Uniform Condominium Act as drafted by the National Conference of Commissioners on Uniform State Laws.

Explanation—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter printed in italics *thus* is new matter.